



STATE OF MICHIGAN  
DEPARTMENT OF STATE  
LANSING

July 18, 2006

**DETERMINING THE VALIDITY OF  
OPTICAL SCAN BALLOT MARKINGS**  
*(Issued May 27, 2004)*

Michigan election law, MCL 168.799a(3) as amended under PA 92 of 2004, provides the following direction on recounting optical scan ballots:

If the electronic voting system requires that the elector place a mark in a predefined area on the ballot in order to cast a vote, the vote shall not be considered valid unless there is a mark within the predefined area. A stray mark made within a predefined area is not a valid vote. In determining whether a mark within a predefined area is a stray mark, the board of canvassers or election official shall compare the mark subject to recount with other marks appearing on the ballot. The secretary of state shall issue instructions, subject to the approval of the board of state canvassers, relevant to stray marks to ensure the fairness and uniformity of determinations made under this subsection. A secretary of state's instruction relevant to stray marks shall not be applied to a ballot unless the secretary of state issued the instruction not less than 63 days before the date of the election.

Similar direction is provided under Michigan election law, MCL 168.803(2) as amended under PA 92 of 2004:

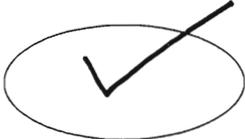
If an electronic voting system requires that the elector place a mark in a predefined area on the ballot in order to cast a vote, the vote shall not be considered valid unless there is a mark within the predefined area. A stray mark made within a predefined area is not a valid vote. In determining whether a mark within a predefined area is a stray mark, the board of canvassers or election official shall compare the mark with other marks appearing on the ballot. The secretary of state shall issue instructions, subject to the approval of the board of state canvassers, relevant to stray marks to ensure the fairness and uniformity of determinations made under this subsection. A secretary of state's instruction relevant to stray marks shall not be applied to a ballot unless the secretary of state issued the instruction not less than 63 days before the date of the election.

The above provisions of law were enacted to accommodate those situations where the tabulating equipment employed to count optical scan ballots cast at an election is unable to recognize a properly cast vote. Such situations generally stem from the voter using an inappropriate marking tool to vote his or her ballot. They can also occur if the ballot marking is not dense enough for the tabulator to recognize the presence of a vote.

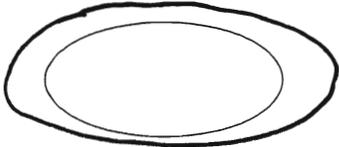
It merits emphasis that the proper way to indicate a vote on an optical scan ballot is to make a mark within the "predefined area" designated for casting a vote. Thus, any markings that are inconsistent with this standard cannot be counted as votes.

**Optical Scan Systems Employing  
“Oval” Target Areas**

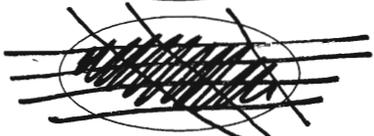
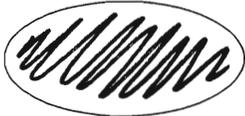
**Valid markings:** Each of the examples provided below is a valid vote as there is a mark within the “predefined area” for casting a vote.



**Invalid markings:** Each of the examples provided below is an invalid vote as a mark does not appear within the “predefined area” designated for casting a vote.



**Corrections:** A correction that causes a “false” tabulator read does not count as a valid vote.



Count for top position only

Counts for top position only

**Stray marks:** “A stray mark made within a predefined area is not a valid vote. In determining whether a mark within a predefined area is a stray mark, the board of canvassers or election official shall compare the mark with other marks appearing on the ballot.”

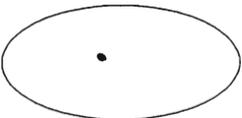
**Candidate A**



**Candidate B**



**Candidate C**



Counts for top two positions only

**Optical Scan Systems Employing  
“Arrow” Target Areas**

**Valid markings:** Each of the examples provided below is a valid vote as there is a mark within the “predefined area” for casting a vote.



**Invalid markings:** Each of the examples provided below is an invalid vote as a mark does not appear within the “predefined area” designated for casting a vote.



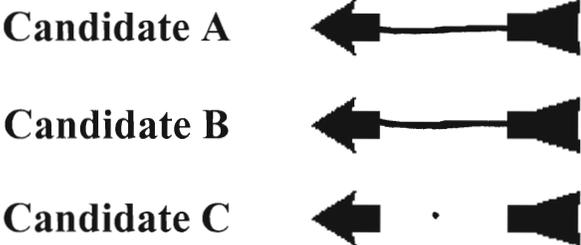
**Corrections:** A correction that causes a “false” tabulator read does not count as a valid vote.



Counts for top position only

Counts for top position only

**Stray marks:** “A stray mark made within a predefined area is not a valid vote. In determining whether a mark within a predefined area is a stray mark, the board of canvassers or election official shall compare the mark with other marks appearing on the ballot.”



Counts for top two positions only